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# NSW Legislative Council Hansard

## HEALTH LEGISLATION FURTHER AMENDMENT BILL

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### Second Reading

**The Hon. JOHN DELLA BOSCA** (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [9.05 p.m.]: I move:

That this bill be now read a second time.

The second reading speech was delivered by the Minister in the other Chamber and I seek leave to have it incorporated in *Hansard*.

#### Leave granted.

This bill proposes amendments to a number of pieces of health legislation, namely, the Dental Technicians Registration Act 1975, the Health Services Act 1997, the New South Wales Institute of Psychiatry Act 1964, the Optical Dispensers Act 1963 and the Public Health Act 1991. The bill also proposes the repeal of the Nursing Homes Act 1988. I commence with the repeal of the Nursing Homes Act and the associated amendments to the Public Health Act. The Nursing Homes Act was enacted in 1988 and requires all nursing homes in New South Wales to obtain a licence to operate from the Director-General of Health. The Act does not apply to those facilities that were previously known as hostels.

The Nursing Homes Act predates the Commonwealth Government's Aged Care Act 1997, which establishes a comprehensive funding and regulatory regime for aged care facilities for both nursing homes and hostels. Therefore, nursing homes in New South Wales are currently regulated by both State and Commonwealth governments. This is in contrast to other States, where the Commonwealth alone regulates nursing homes. As part of the Government's obligations under the competition principles agreement the Department of Health conducted a review of the Nursing Homes Act. That review concluded that as the Commonwealth's Aged Care Act provides a comprehensive regulatory and funding system for aged care the Nursing Homes Act adds an additional and unnecessary layer of regulation to the aged care sector.

There has long been concern by nursing home operators that duplicate State Government regulation of nursing homes places additional barriers to the opening of new places by service providers. The repeal of the Nursing Homes Act demonstrates the Government's commitment to remove any obstacles to bringing new aged care places on line and it will assist families in securing a place for a family member who requires dedicated professional care. While the Commonwealth regulatory system is comprehensive and incorporates a wide range of powers to sanction poor performers there is one area where the Government is concerned that Commonwealth regulation is inadequate and where it is necessary to retain State Government regulation. This is a strong commitment from the Government in the area of professional nurse staffing.

Under the Nursing Homes Act all licensed facilities are required to employ a chief nurse to be responsible for the overall care of the residents of a nursing home. Licensed nursing homes are also required to ensure that there is at least one registered nurse on duty at all times in the facility. The Commonwealth's legislation does not include requirements for minimum nurse staffing. Therefore, cognate to the repeal of the Nursing Homes Act, amendments to the Public Health Act have been prepared to carry over the current staffing requirements from the Nursing Homes Act. For that purpose a definition of "nursing home" is to be included in the Public Health Act. That definition includes any facility that is currently licensed under the Nursing Homes Act or that was approved in principle for licensing, any facility that in the future is granted high-care residential places under the Commonwealth's Aged Care Act and any other class of facility prescribed by the regulations.

This comprehensive definition is designed to retain the status quo in relation to nurse staffing. The inclusion of any facility that in the future is granted an allocation of high-care places is intended to ensure that there is a level playing field and that residents in a facility that would have been required to be licensed under the Nursing Homes Act will be guaranteed the same minimum staffing levels as those facilities that were, in fact, licensed. The power to make regulations to include additional classes of facilities in the definition of "nursing home" will provide a mechanism to quickly respond to any changes in the way the Commonwealth allocates aged care places. This is particularly relevant, given the recent Commonwealth review of aged care funding.

I take this opportunity to provide the House with an undertaking that the Government will monitor developments in the Commonwealth's classification of aged care places and will regulate as required to ensure that any changes do not allow facilities providing care to the most dependent residents to avoid their obligations to have a registered nurse on duty at all times and to appoint a director of nursing. Officers of the Department of Health have undertaken detailed consultation with peak aged care industry bodies and the New South Wales Nurses Association on these matters. It is important to

acknowledge that all participants in these consultations have acted in good faith and done their best to reach agreement on the most appropriate mechanism to meet the Government's commitment to maintain nurse staffing levels for the benefit of nursing home residents.

The proposed amendments to the Public Health Act achieve an appropriate balance. It is further proposed to amend the Public Health Act to delete section 52. This section requires the Minister to approve crematory equipment and apparatus. Consistent with the Government's commitment to the competition principles agreement, the Department of Health undertook a review of the Public Health Act, which recommended removing that section. It was found to be overly regulatory. The Environment Protection Authority has oversight of industry operations with its regulations governing equipment and omissions.

The next proposed amendment is to the Dental Technicians Registration Act 1975 to bring the maximum penalties for breaches of the Act and the regulations into line with the penalties that apply under other health professional registration Acts in New South Wales. The proposed increase for penalties for an offence under the Act is from five penalty points to 50 penalty points or from \$550 to \$5,500. It is proposed to increase the penalties that can be imposed by regulation from two penalty points to 10 penalty points, or from \$220 to \$1,100. It is important to ensure that the penalties remain comparable to, and consistent with, similar penalties applying to other health professionals.

It is proposed to amend the Health Services Act 1997 to support NSW Health's shared corporate services program. The report of the Independent Pricing and Regulatory Tribunal entitled "New South Wales Health: Focusing on Patient Care" confirmed that the potential exists for significant savings to the health system through consolidation of corporate services and other support functions and it recommended that a shared corporate services entity be established. There already has been significant work undertaken to reform the delivery of corporate services across area health service boundaries. In order to make further progress in the efficient and effective provision of corporate and health support services, amendment of the Health Services Act is now required to establish a shared corporate services vehicle for the public health system. The proposed vehicle is through the establishment of a Public Health System Support Division of the Health Administration Corporation, a corporation established under the Health Administration Act 1982.

The concept of shared corporate service delivery is now being embraced here and overseas, in both the public and private sector, as an effective means of improving corporate and business service delivery within a large organisation. In NSW Health, the Shared Corporate Services Program will drive this process. Included in the program are all health support services such as linen and catering services, as well as traditional corporate services such as human resources, finance, information technology, asset management and administrative services. The program will see services delivered through local and regional networks by public sector staff under an umbrella service delivery structure in the form of a Public Health System Support Division of the Health Administration Corporation. This structure will provide maximum flexibility so as to allow the delivery of services in the most efficient manner.

The bill includes provisions to facilitate the transfer of public health system staff engaged in corporate and health support service delivery to the Public Health System Support Division of the Health Administration Corporation, or the use of such staff by the Health Administration Corporation. I emphasise for the benefit of members that any employee of a public health organisation who is transferred to the Public Health System Support Division of the Health Administration Corporation will retain all existing entitlements and employment conditions. Like all other staff in the public health system, employees of the Health Administration Corporation engaged in the Public Health System Support Division to provide health support and corporate services within that system will be employees of NSW Health.

These proposals are about achieving the maximum benefit to the public health system by establishing a division of the Health Administration Corporation as the public sector provider of health support services. Proposed section 126G ensures that the shared corporate services program can be implemented in a consistent manner across the public health system, and that maximum benefit of the program can be realised. This clause provides that compliance with Ministerial directions concerning the provision and use of corporate and health support services under the new shared model does not expose public health organisations or the Health Administration Corporation to potential action under Part IV of the Commonwealth Trade Practices Act. Section 51 of the Trade Practices Act permits the statutory authorisation of conduct that might otherwise fall under Part IV, and there is precedent for its use in these circumstances in the form of section 134O of the Victorian Health Services Act 1988.

I turn now to the proposed amendments to the New South Wales Institute of Psychiatry Act 1964. The purpose of these amendments is to ensure that the institute may operate outside the territorial boundaries of New South Wales without seeking Ministerial approval, and to address administrative difficulties experienced by the institute in relation to the incurring of expenditure and the employment of staff. One of the primary roles of the institute is the provision of education and training to health professionals and other members of the community in the field of mental health. For over 30 years the institute has been engaged in providing education and training to individuals, both interstate and overseas, and has been recognised by the World Health Organisation for this role. However section 4 (3) of the Act requires Ministerial approval before the institute may operate outside the borders of New South Wales. In order to facilitate the institute's ongoing collaborations with other jurisdictions and to remove unnecessary administrative impediments to those collaborations, it is proposed to remove the requirement that Ministerial approval be obtained before the institute operates outside New South Wales.

The second series of amendments to the Act is to allow the institute, subject to the Minister's approval, to arrange for the employment of its own staff. This amendment will, if approved, make administration of the institute more efficient. Finally, it is proposed to provide the institute with a general power to delegate its functions to its staff. This power of delegation will allow the administration of the institute to be undertaken in a more effective and efficient fashion.

The bill also contains proposed amendments to the Optical Dispensers Act 1963 to address serious concerns about the health risks associated with coloured and novelty contact lenses. The Optical Dispensers Act restricts the dispensing and sale of optical appliances. The Act currently defines an optical appliance as an appliance designed to correct, remedy or relieve any refractive abnormality or optical defect of sight. This definition does not include coloured or novelty contact lenses that serve no corrective purpose. Therefore, any person, irrespective of their training or expertise in eye care, may carry out the sale and dispensing of those contact lenses. The United States Food and Drug Administration [FDA] issued a consumer warning on the dangers associated with such lenses. The FDA warned that improper use of such lenses could lead to loss of sight and it recommended that consumers should only obtain lenses following proper fitting by an eye care professional.

It is therefore proposed that the Optical Dispensers Act be amended to ensure that novelty and coloured contact lenses may be obtained only from registered optometrists and licensed optical dispensers. The proposed amendment will ensure that the supply of lenses remains within the purview of regulated health professionals and helps to ensure that lenses are properly fitted and that consumers receive proper attention and advice when purchasing lenses. While the proposed amendments will ensure that those lenses can be retailed only by optometrists and optical dispensers, there will be no requirement for purchasers to obtain a prescription. The proposed amendment will not affect current business practice and will not disadvantage manufacturers or suppliers who have advised the Department of Health that their lenses are distributed only via optical dispensers and optometrists. I commend the bill to the House.

**The Hon. ROBYN PARKER** [9.06 p.m.]: The Health Legislation Further Amendment Bill proposes amendments to the New South Wales Institute of Psychiatry Act 1964, the Dental Technicians Registration Act 1975, the Health Services Act 1997, the Optical Dispensers Act 1963 and the Public Health Act 1991. The bill will also repeal the Nursing Homes Act 1988. I advise at the outset that the Opposition will not oppose the bill, but I wish to raise certain aspects of the bill.

Amendments to the New South Wales Institute of Psychiatry Act to remove requirements for the institute to apply for the Minister's approval before operating outside New South Wales are commonsense and practical provisions to facilitate the ability of the institute to delegate administrative functions. From time to time it is necessary to update legislation and this amendment will allow for modern-day practices and standards to apply. Indeed, to some extent the institute has already been operating in this fashion and has received recognition from the World Health Organisation for its role in this regard. It should not be necessary for the institute to seek ministerial approval to operate outside New South Wales. Other amendments will allow the institute to make arrangements with respect to the employment of its own staff and the delegation of functions of its staff.

The bill also removes Public Health Act provisions requiring the Minister for Health to approve crematory equipment and apparatus. These are sensible measures, particularly in light of the fact that the Environment Protection Authority already provides oversight and regulation in that regard and it is the more appropriate body to do so. The bill amends the Dental Technicians Registration Act 1975 to increase the penalty points from five points to 50 points for breaches of the Act. It brings the penalties into line with other health professional registration Acts and, therefore, it is appropriate for the penalties to be updated. Honourable members will recall that recently the House debated increasing penalty points for other health care providers. The penalty points to be imposed through regulation also will be increased from two penalty points, or \$220, to 10 penalty points, or \$1,100. As I noted at the outset, these are sensible and timely amendments. However, I make some cautionary comments with respect to the repeal of the Nursing Homes Act and associated amendments to the Public Health Act.

The Nursing Homes Act 1988 requires all nursing homes in New South Wales to obtain a licence from the Director-General of Health to operate. However, the Act does not apply to those facilities previously known as hostels. The Nursing Homes Act came into existence prior to the Commonwealth Government's Aged Care Act 1997. The Commonwealth Act establishes a funding and regulatory regime for aged-care facilities for both nursing homes and hostels. Unlike the situation in other States, in New South Wales nursing homes are currently regulated by both the New South Wales and the Commonwealth governments. Therefore, it is appropriate to assist nursing homes by removing one level of government regulatory accountability so that they have to comply with only one set of standards and regulations. There is some concern about professional nursing staffing under the New South Wales Public Health Act. The sector has raised two key concerns. The first is that consumer protection be built into the existing Commonwealth legislation. If a nursing home is found to be wanting in a particular regard, sanctions can be enforced by the Federal Department of Health and Ageing, and history shows that that can include withdrawal of a licence and closure of a home. The Act also provides for a complaints mechanism and resolutions regime. Sanctions have been applied and nursing homes have been closed to ensure that the aged and the infirmed in our community get the care they deserve.

The sector's argument is that if professional nursing standards in a nursing home are not up to scratch and there are resultant problems, the Commonwealth legislation already has sanctions in place. It is concerned also that one unintended consequence may be that the provisions are a disincentive to the future provision of high care, particularly with small numbers of high-care places in country areas, such as those in the Hunter where I live. The sector is justifiably concerned that nursing homes will have to pay for both the director of nursing and 24-hour coverage by a registered nurse. The proposed amendments to the Public Health Act require that the director of nursing be a nurse, and that 24-hour care be available on site by a nurse. This would mean that smaller acute-care establishments, particularly in country areas, may have to double up when the director of nursing is in attendance during nursing hours and could act as a qualified nurse providing that service.

I ask the Minister to consider whether that concern is valid and, if so, address it. Perhaps we could hear more from the Minister on that point. The shadow Minister for Health, Barry O'Farrell, raised also the concerns of some associations about low-care places, which were previously known as hostels. I note that the Minister in his second reading speech in the other place provided an assurance that new staffing provisions will apply only to existing nursing homes and to high-

care places allocated under the Home Care Act. That is important because the Aged Care Industry Council indicated that it would have strong opposition to the legislation if it were extended to cover low-care establishments. Perhaps the Minister can confirm that that is still the case.

As I said, there is concern about other aspects of the bill. The Board of Optometrical Registration and the Optical Dispensers Licensing Board have looked at ways in which cosmetic contact lenses are supplied to the general public. I am pleased that the Government has stopped short of introducing a system that requires a prescription to obtain particular products. Consumers who are attracted to cosmetic contact lenses to change the colour of their eyes, rather than to gain any benefit in terms of better eye sight—which such lenses do not provide—are not likely to be able to afford, or want, to go through the process of obtaining, a prescription which could lead to the purchase of cosmetic contact lenses over the Internet or through other means without the necessary advice and protection for the purchaser.

The bill provides for advice to be given to consumers about some of the pitfalls that might occur with cosmetic contact lenses and the correct way to apply them. It will result in a better public health outcome without adding extra cost. Indeed, it provides for a regulatory scheme so that the dispensing of cosmetic contact lenses is controlled. This legislation amends also the Health Services Act to establish a corporation to achieve savings through the health system—what the Minister has described as the consolidation of corporate services and support functions. I am concerned that this solution, which seeks to reduce administrative overheads, will establish yet another layer of bureaucracy. Historically, the Carr Government has shown a great fondness for, among other things, layers of health bureaucracy.

I would like to think that the proposed benefits will flow through and, indeed, provide front-line support and more funding for health care, rather than add layers of further bureaucratic positions. The legislation followed the announcement by the Minister of Health earlier this year that reorganising the health portfolio and area health services—we will be dealing with some of those amendments in later legislation—could mean the loss of jobs. At times, the savings seemed to be a bit illusory. Indeed, we do not always see evidence of savings being delivered in wards, in providing more nurses, more beds and better health outcomes for the people of New South Wales. Indeed, in the Hunter, where I live, comments in the *Newcastle Herald* by Terry Clout, who is responsible for the Hunter area health service, seem to bear out that contention when he talks about the tribunal.

The Opposition's major concern is that if we consolidate some of these services we need to ensure, particularly in country towns, that front-line services are the beneficiary and that an attempt is made to engage the community and those directly affected, particularly in areas where there might be some job losses as a result of the consolidation of services. I place on record the Opposition's concern about potential job losses as a result of implementing this legislation. The Minister has advised that the plan will generate \$100 million in savings. We want to see that money ploughed back into front-line services. The shared corporate services program includes plans to improve services such as recruitment, payroll, accounts, purchasing, information technology support, legal communications and support to non-clinical services, such as linen and catering.

At the end of the day, if that outcome is achieved and if there are improvements to health-care services, the health-care system in New South Wales, which is failing under the Carr Government, can only be assisted, and the mismanaged health department can only be improved. If savings are delivered and they provide help where it is needed in our hospitals, by providing more beds—there has been an incredible reduction in beds since the Carr Government came to office—we will be delighted, particularly if the local communities are consulted about and involved in those changes. If job losses are minimal and the outcomes are beneficial to the people of New South Wales and for health care generally, we will be pleased to support this legislation. I ask the Minister in his reply to deal with those matters I have raised and, in particular, re-state the Minister's comments in his second reading speech regarding nursing homes.

**Reverend the Hon. Dr GORDON MOYES** [9.21 p.m.]: The objects of the Health Legislation Further Amendment Bill are to implement changes to a number of pieces of health-related legislation. The major statutes affected are the Dental Technicians Registration Act, the Health Services Act, the New South Wales Institute of Psychiatry Act, the Optical Dispensers Act and the Public Health Act. Importantly, the bill proposes to repeal the Nursing Homes Act and its concomitant regulation, an initiative taken as a result of national competition policy, in order to streamline legislation applicable to nursing homes in New South Wales. Apparently, New South Wales is the only State in Australia in which both Commonwealth and State legislation applies to nursing homes.

As a person who has been a provider of nursing homes in this State—seven of them—I can assure honourable members that there is a constant problem between Commonwealth and State legislation. The buck is passed from one authority to another on a whole range of issues, with the emphasis on the State trying to pass the costs of high-care nursing over to the Commonwealth. The bill will remove a layer of State legislation seen as unnecessary for the effective regulation of nursing homes.

The repeal of the Nursing Homes Act is certainly due. One of the important implications of the repeal of the Nursing Homes Act and the Nursing Homes Regulation, as noted by the Carr Government, would be the void left in the regulation of professional nurse staffing. Many people do not understand this. As a practitioner who has held licences for a significant number of nursing homes and high-care centres, including third schedule public hospitals, I can say that the arrangements with Commonwealth legislation and State requirements for professional nurse staffing are very muddled.

A nursing home—and I will use that phrase for the moment, although these days they are usually referred to as high-care nursing centres—that is built on one level can be operated with three shifts of nurses a day, seven days a week, with only one registered nurse, merely because it is only on one level. On the other hand, the F. H. Rayward Lodge at Harbord, which I have operated, is a seven storey building, and a registered nurse is required on every level, for three shifts a day, seven days a week. The cost difference for staffing each year between those two examples is in excess of \$1 million, for registered nurses alone.

This bill will regulate this part of the Public Health Act, requiring a registered nurses to be on duty at a nursing home at all times. I have no problem with that requirement; I have always maintained that as a minimum. Directors of nursing should always be registered nurses. In Christian retirement facilities we encourage the employment of registered nurses on every floor, three shifts a day, seven days a week. The bill also requires the director of a nursing home to be a registered nurse also. Again, I have no problem with that provision; that has been my practice over many years.

The bill inserts a definition of "nursing home" in order to facilitate limited governance by the Public Health Act of nursing homes. I point out some difficulties with this proposal. I have already said that the term "nursing home" is not in general use these days. We are talking about high-care nursing, and within the industry we have a number of different facilities. Some are high-care centres, which must engage registered nurses in the event of an emergency or the need for intervention with regard to serious health issues that relate to very frail, aged people. We also have to take into account the Commonwealth's emphasis upon aged care in place. Ageing in place is a very important government philosophy and that has developed a whole range of new programs. The Government will be aware of the extended aged care in homes [EACH] program. I run a number of those at this moment also. The program does not take aged people into high-care nursing homes; it takes high-care nursing staff into the homes of clients and provides the level of care in the client's home that is provided in a nursing facility.

The bill seems a little soft on this point and I ask the Government to consider alternative programs such as the EACH program and ageing in place, which provide high care and extended care in the client's home. A number of new programs provide this type of care, and we will see much more of it. The Government should also take account of other activities, including one with which I have had quite some experience over the years. I have managed nursing services on behalf of Wesley Mission for many years, particularly the Noakes Nursing Service. Currently we have 700 nursing staff, which include registered nurses, nursing assistants and personal care staff that we hire out to nursing homes, government hospitals—including some of our largest hospitals, including Royal North Shore Hospital—private establishments and not-for-profit nursing homes across the northern, north-western and some southern parts of Sydney. These services, particularly ageing in place, must be taken into account in this bill.

The bill proposes to remove a provision from the Public Health Act that deals with the use of crematory equipment and apparatus in order to simplify regulatory requirements. I find it rather amusing that such a provision has related to nursing homes—although over the years I have also had the responsibility of running several morgues. We do not have any crematory out the back.

**Ms Sylvia Hale:** Although, as you said this morning, they are only very small.

**Reverend the Hon. Dr GORDON MOYES:** They are only small. As a matter of fact, the latest crematory equipment is smaller than even a baker's oven. Regardless, I do not think such provisions should be linked with nursing home legislation. We supervise our staff very closely, and I can assure honourable members that we do not get rid of our failures! The bill proposes amendments to the Dental Technicians Registration Act to bring the maximum penalties for breaches of relevant statutory measures into line with penalties applicable under other health professional registration legislation in New South Wales. We support those changes.

Turning to the Health Services Act 1997, I point out that the report by the Independent Pricing and Regulatory Tribunal entitled "New South Wales Health: Focusing on Patient Care" has confirmed that there is a current potential for significant savings for the health system through the consolidation of corporate services, and it was recommended that a shared corporate services entity be established. As a result, the bill proposes the establishment of a Public Health System Support Division of the Health Administration Corporation, the corporation established under the Health Administration Act 1982, to be part of the public health system.

The bill provides that staff currently involved in providing corporate and health support services will be transferred to this division. In his second reading speech the Minister emphasised that those transferred to this new division will retain all existing entitlements and employment conditions. The bill also amends the definition of "nursing home" as a result of the repeal of the Nursing Homes Act 1988, and this is overdue. However, I indicate that around Australia there are now a number of different definitions and I would ask those advising Ministers on this to note what is happening so we can get some uniformity among the States.

The New South Wales Institute of Psychiatry Act 1964 always poses a number of difficulties. The bill amends that Act to ensure that the institute may operate outside New South Wales without seeking the approval of the Minister. This is proposed in order to ease administrative burden and also to facilitate efforts with interstate and overseas entities for the provision of education and the training of professionals. The whole area of working in psychiatry, for both not-for-profit and for-profit organisations, is a minefield. For the last 27 years I have been responsible for running three psychiatric hospitals, including one of the largest in the nation, and we currently have 72 psychiatrists on staff. The experience of working with large numbers of psychologists and psychiatrists and nursing staff is almost enough to make me a good candidate to be a member on the Government side. The power to delegate to staff is also proposed in order to give more freedom to the institute to concentrate on matters of strategy.

I say very little about the Optical Dispensers Licensing Act except to make the point that coloured and novelty, non-prescription contact lenses are being sold or dispensed by anybody. I notice them for sale at the markets. People can buy them at Paddy's and acquire a new appearance. They can be bought at the Morisset Mega Market and other places. The people who sell these lenses have no training or expertise in eye care: they simply import them and sell them like any other products.

I checked with a member of the optical dispensers association and was told that although it is commonly believed that the improper use of these lenses may lead to the loss of sight he has never known of this being likely to happen. However, the proposal in the bill is a conservative and safe practice. The Minister assured us that the proposed amendments will not affect current business practice and will not disadvantage manufacturers or suppliers, who have advised the Department of Health that their lenses are distributed only by optical dispensers and optometrists. I ask the Government to look carefully into the issues of ageing in place, that is in their own home, and in high-care nursing centres, and also the provision of high-care nursing services to patients in extended care in their own home. We commend the bill.

**Ms SYLVIA HALE** [9.34 p.m.]: This bill incorporates an extraordinary mishmash of issues, and it brings them together in a way that is often inappropriate, as Reverend the Hon. Dr Gordon Moyes said. The Government has lumped together dental technicians registration, psychiatry, nursing homes, cosmetic contact lenses, and crematory equipment in the same basket. Whether the Government considers each of these issues so unimportant that it does not warrant a bill in its own right, or whether it is simply symptomatic of a lazy government that cannot be bothered to give each issue full consideration, the Greens put on record our opposition to so many disparate issues being dealt with in the one bill. The only thing linking these issues is the fact that they fall within the responsibility of the Minister for Health, but bills such as this make a mockery of informed, considered public debate.

The Greens had intended to move an amendment to remove provisions that would abolish the Nursing Homes Act. However, I have been informed that it is not possible to do so because such an amendment would be contrary to the object of the bill. So, because so many disparate elements have been lumped together in the bill it is impossible for the Greens to move an amendment to remove a part of the bill that we find unacceptable.

The Greens are not opposed to most of the provisions of the bill. We support proposals to tighten control of the sale of cosmetic lenses, and note that this move has the widespread support of the optometry industry. The improper use of contact lenses, whether accidental or otherwise, can lead to potentially serious health impacts and possibly even the loss of sight. For this reason the Greens wholeheartedly endorsed the proposal to limit the sale of all contact lenses to fully trained, licensed dispensers.

The Greens also support the change to the Dental Technicians Registration Act to increase penalties for breaches of the Act, bringing them into line with the penalties applying to other health professions. The Greens recognise the merit of having legislative continuity across the different health professions, but I once again put on record the Greens' opposition to higher financial penalties being used as a means of maintaining high professional standards. Higher fines for breaches of the Act do not automatically deliver better quality health care. The Greens support the proposed amendments to the Public Health Act and the Institute of Psychiatry Act, both of which appear to remove unnecessary regulation and bureaucracy.

I turn now to the Health Services Act. While it is sometimes the case that savings and efficiency improvements can be achieved through shared service delivery, on this occasion the Government has failed to provide any hard evidence of that. The proposed amendments are being justified on the basis that shared corporate services and the establishment of a new division of the Health Administration Corporation will result in cost savings, but no evidence has been provided. It is not good enough for the Government to simply assert that amalgamations and mergers will automatically produce savings.

This furphy has been exposed with the Government's hollow justification for council amalgamations. Across the State councils have been sacked and merged, all on the pretext of cost savings, when the Government's real agenda has been to concentrate and centralise State government control. Understandably, there is some suspicion surrounding the Government's claims of supposed cost savings. There is disquiet within the medical fraternity that the real agenda behind the move by the Government to rationalise corporate services is not about cost savings but, rather, an attempt to centralise control and make it easier for the Minister and the inner sanctum of the Carr Government to exert control over the corporate arm of NSW Health. No doubt time will tell.

I turn now in some detail to the most contentious provision in the bill: the proposal to abolish the Nursing Homes Act. Let me say at the outset that the Greens reject the Government's explanation that the Nursing Homes Act must be abolished to comply with the Government's competition policy principles agreement with the Commonwealth. How much longer will the people of New South Wales have to put up with the two major political parties in this State using market ideology and competition policy to justify decisions about the provision of social services being made on the basis of market considerations rather than social need?

Nursing homes and aged care should not be subject to the forces of an unfettered, competitive market. Caring for some of the most frail and vulnerable members of our community, people who have spent decades contributing their labour, passion, skills and taxes to the betterment of society, cannot be left to the vagaries of the economy. This sector does not function as a normal market, for a variety of reasons. Many elderly people, and indeed some nursing homes themselves, are often heavily reliant on the not-for-profit sector to provide a wide range of support services. In addition, decisions about nursing home placement are completely different from other purchasing processes. Decisions about the selection of a nursing home are often made collectively by families and clients and are based on a wide range of emotional, geographic, medical and cultural factors. Many of these considerations are outside the market paradigm.

The Government has justified this move towards a more market-based approach to aged care as an attempt to stimulate the provision of additional beds. The Minister's second reading speech claimed that this bill would "remove any obstacles to bringing new aged care places on line and will assist families in securing a place for a family member". The move towards a privatised, market-driven approach to child care has done precisely the opposite. Under the Howard

Government's market-driven approach, child care places are harder to get, more expensive and increasingly of inconsistent and/or poor quality. A wise and astute Government would heed the mistakes made in child care rather than repeat them in aged care. The Greens categorically reject the assertion that the introduction of competition principles will, by definition, deliver more beds or better quality aged care.

Key stakeholders in the aged care sector have for some time raised concerns about the overzealous charge towards a fully competitive market. Organisations, including UnitingCare and the Council of Social Service of New South Wales, expressed concern as early as during the review of the Act in 2000 that proprietors, driven by the financial bottom line and operating in an environment of weaker legislation, will inevitably resort to reduced quality of care for recipients and dangerous, stressful working environments for staff.

During the review numerous organisations expressly warned against abolishing the Act. They included the Retired Teachers Association, the Council of Senior Citizens Associations, JewishCare, Aged Services, the Alzheimer's Association of New South Wales, the Council on the Ageing (NSW), the Council of Retired Union Members Association, the Australian Association of Social Workers (NSW), Carers NSW Inc., and the New South Wales Health and Community Care Development Officers Network. All these organisations signed a submission that made the following observation:

The Nursing Home regulations continue to be an essential measure against unscrupulous proprietors and a safeguard for residents; one that should not be lost in any changes to the NSW Act.

The submission continued:

While it can be argued that there is duplication of legislation at Commonwealth and State levels, there are aspects of the NSW legislation that are unique and serve to safeguard the needs, rights and interests of older people in residential care facilities.

The submission concluded:

NSW should retain, expand and strengthen its regulatory role because of the duplication and inconsistencies between Commonwealth and State legislation.

Rather than abolish the Act, those organisations argued that there was a real and pressing need to retain and strengthen the New South Wales legislation if we are to protect the needs and interests of residents in New South Wales nursing homes. Although I have not managed to speak to each and every organisation that endorsed the submission, those to whom I have spoken are still staunchly opposed to the repeal of the Nursing Homes Act. They have two main concerns, and I will deal with them individually.

The first relates to the Commonwealth legislation adopting a more laissez faire approach to staff and resident ratios and allowing staff with a lower level of professional accreditation to manage and staff nursing homes. The second relates to the weakness of the Commonwealth legislation in relation to consumer protection and complaints mechanisms. The New South Wales Act stipulates the number of staff required for a given number of residents. It also provides that a licensed nurse must be duty at all times. The Commonwealth legislation is far less prescriptive and makes no reference to a nursing staff to resident ratio. It requires only that one nurse be on duty.

While the privatised nursing home industry has lobbied for this, consumer groups and residents are concerned that the Commonwealth system would lead to fewer nurses on staff and an overall reduction in the standard of care. Both the Australian Consumers Association and the Combined Pensioners and Superannuants Association find this a cause for concern. Both organisations are also worried about the loss of consumer protections.

For some time there has been widespread dissatisfaction about the Commonwealth complaints mechanism because it offers fewer avenues for making complaints and has less capacity to investigate and substantiate them. This investigative role is vital in cases in which residents or their families have lodged a complaint while the resident remains in the nursing home. Some residents, or, more accurately, most residents at some point, will be heavily reliant on nursing home staff for their day-to-day needs. In that situation they are vulnerable to coercion or exploitation. It is essential that residents and their families have a rigorous and fully independent complaints mechanism at their disposal. Unfortunately, there are unscrupulous or negligent operators. The Commonwealth mechanism does not provide the same level of protection as the New South Wales system.

As I said, the Greens are not opposed to the concept of streamlining State and Commonwealth legislation to avoid unnecessary duplication and administrative red tape. There is also no doubt that more beds are required now. With our ageing population, that need will only accelerate. However, the process of streamlining the regulatory environment and augmenting overall stock must also guarantee the highest level of safety and consumer protection. Unfortunately, with this bill the New South Wales Government is transferring its responsibilities to the Commonwealth in the full knowledge that consumers will have less protection. The fact that many of these consumers are aged and vulnerable is all the more worrying. As I said in my opening remarks, the Greens support most of the provisions in this bill, but we have great concerns about the provisions that abolish the Nursing Homes Act.

**The Hon. Dr PETER WONG** [9.47 p.m.]: I support the Health Regulation Further Amendment Bill, which amends six Acts, but I do so with reservations about a few of the amendments. I do not intend to address the amendments in the sequence in which they appear in the bill. The first amendment I will deal with relates to the Optical Dispensers Act 1963. As the Minister said, in amending an Act that has been in existence for 41 years, the bill addresses serious health risks associated with coloured and novelty contact lenses. The amendment provides that novelty and coloured contact lenses can be dispensed only by a registered optometrist or licensed optical dispenser. As a medical practitioner, I am well aware

of the health risks associated with the sale and dispensing of contact lenses without proper fitting by an eye care professional. Without a proper fitting by a registered optometrist, the cornea can be severely deprived of oxygen, leading to corneal ulcers and keratitis. I strongly support that amendment.

The second amendment that I will deal with relates to the Dental Technicians Registration Act 1975. There are no major structural changes in the bill; rather, it seeks to impose penalties that are comparable with and consistent with similar penalties applying to other health professionals. In light of that, I do not oppose this amendment.

The third amendment makes a few changes to the New South Wales Institute of Psychiatry Act 1964. I support the amendment, which will allow the Institute of Psychiatry to operate interstate and overseas without seeking ministerial approval. I also support the amendment that will give the Institute of Psychiatry general powers to delegate functions to staff within the institute. While I support the amendment that will allow the Institute of Psychiatry to arrange employment for its staff, this will remain subject to the Minister's approval, and that seems to compromise the independence and objectivity of the institute. Nevertheless, I do not oppose the amendment to this Act.

In relation to the proposed amendment of the Public Health Act 1991, I do not oppose the change that requires ministerial approval for crematory equipment and apparatus, given that the Environment Protection Authority oversees and regulates this area. For a nursing home, whose primary duty is to provide general and palliative care to the elderly, I am encouraged that amendments to this Act will provide for a standard in minimum staffing levels. There is no doubt that a registered nursing home requires a registered nurse to be on duty at all times. Without a registered nurse, or several for that matter, depending on the size and number of residents, there cannot be a dispensation of prescribed medicine. The requirement that a registered nurse be appointed as a director of nursing is very sensible. A registered nurse in such a position can best identify with those in care and the needs of the nursing staff.

The proposed amendments that would cut through the need to comply with two levels of government are very sensible indeed. I agree with the Minister that the Commonwealth Government's Aged Care Act 1997 is comprehensive and incorporates a wide range of powers to sanction poor performance. While minimum nursing staff levels are not mentioned in Commonwealth legislation, I am encouraged that the Government seeks to at least maintain such levels. Given the increased demand for nursing home places, we have a responsibility to ensure that providers are not hampered by conflicting regulations, which create unnecessary burdens and divert much-needed finances. I support the proposed amendments.

While I support, in theory, the proposed amendments to the Health Services Act 1997, I am concerned that practical applications, which should, as envisaged in the proposed changes, provide for a more efficient health system by improving corporate and business services, remain ad hoc approaches to continued overhead and administrative costs. While it is sensible to reduce these overhead costs, which can then be pumped back into front-line services, I fear that the rearrangement of these services, where one administrative body is superseded by another, will only generate more bureaucracy and create a new level of management. Honourable members would admit that the Public Health System Support Division of the Health Administration Corporation sounds very bureaucratic and pompous indeed.

The second aspect of this proposed amendment that I am concerned about is the potential loss of jobs, particularly in regional and rural New South Wales. Although the Minister would like to assure all members that all current employees of NSW Health will be redeployed to the new administrative body and retain existing entitlements and employment conditions, I find it difficult to believe that job losses have not been considered in calculating how to minimise costs. Having said this, I will not oppose the proposed amendment. I commend the bill to the House.

**The Hon. JOHN DELLA BOSCA** (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [9.52 p.m.], in reply: I thank honourable members for their contributions to the debate. I can confirm that the matters raised by the Hon. Robyn Parker have been addressed by the Minister and, as I understand it, have been the subject of a detailed response by him in the other place and also in other areas. I am happy to provide those to her in some detail. The Government is committed to maintaining the current high levels of professional nursing care to residents of aged care facilities. The repeal of the Nursing Homes Act and the cognate amendment of the Public Health Act represents a sensible and balanced approach to the regulation of high dependency aged care facilities under a complementary and non-duplicatory Commonwealth-State legislative framework.

For a large organisation such as NSW Health, the amendments to establish a Public Health System Support Division of the Health Administration Corporation as a shared corporate services vehicle will provide an effective means of improving corporate and health support service delivery to the public health system. This approach will help eliminate duplication and inconsistency. The result will be better corporate services at reduced cost. The savings can then be reinvested into front line health services, including, for example, emergency departments, for the benefit of the New South Wales public in general.

[*Interruption*]

I assure the Hon. Catherine Cusack that they will be. This is an important initiative demonstrating the Government's ongoing commitment to improving the delivery of quality health services to the people of New South Wales. The bill incorporates a number of proposed amendments to other Acts within the Health portfolio. As honourable members have observed, amendments to the Dental Technicians Act bring the penalties in that Act into line with other health profession legislation.

The proposed amendment of the Public Health Act concerning crematory equipment, notwithstanding the witticisms of Reverend the Hon. Dr Gordon Moyes, is not proposed, as he suggested, to deal with a nexus between nursing home activities and crematory activities, rather, it removes unnecessary regulation, given the Environment Protection Authority's

oversight of the industry's general operations rather than the health regulatory framework.

The New South Wales Institute of Psychiatry Act amendments streamline the process for forging important international and interstate partnerships. The amendments to the Optical Dispensers Licensing Act, which I think have attracted the support of all honourable members, are a response to new products that have arrived in the marketplace. As Reverend the Hon. Dr Gordon Moyes pointed out, such products have been subject to widespread distribution in a whole range of non-medical and, indeed, non-professional optical dispensing environments. The amendments provide that novelty and coloured contact lenses can be properly dispensed only by a licensed and registered professional. This safeguards the welfare of those seeking to use these items, for whatever purpose—presumably cosmetic reasons in most cases.

The amendments are the result of an ongoing program to diligently monitor and improve general health statute regulation. I understand there have been some suggested amendments, if required. The concern I have is that the ones I have seen drafted seem to be outside the leave of the bill. I will leave them to a later stage of the debate, if indeed there is one. I again thank honourable members for their contributions and I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

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